

Stephen M. Dichter, 004043
sdichter@cdslawfirm.com
Justin R. Vanderveer, 037657
jvanderveer@cdslawfirm.com
CHRISTIAN DICHTER & SLUGA, P.C.
2800 North Central Avenue, Suite 860
Phoenix, Arizona 85004
Telephone: (602) 792-1700
Facsimile: (602) 792-1710

Attorneys for Defendant David Harbour

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

United States of America,

Case No. 2:19-cr-00898-DLR (DMF)

Plaintiff,

NOTICE OF SUPPLEMENTAL AUTHORITY

David Allen Harbour,

Defendant.

David Allen Harbour,

On Tuesday, May 2, 2024, the Court will hear the Parties on the issue of Bail on Appeal and conduct the Restitution Hearing.

Several significant developments need to be brought to the Court's attention:

1. On April 9, 2024, the 9th Circuit filed its opinion in *United States v. Milheiser*, ___ F.4th ___, 2024 WL 1517377 (9th Cir. 2024). Heretofore, Harbour has cited numerous times to cases from outside the 9th Circuit that go to the “nature of the bargain” analysis, e.g., *United States v. Regent Office Supply Co.*, 421 F.2d 1174, 1182 (2d Cir. 1970) and *United States v. Takhalov*, 827 F.3d 1307 (11th Cir. 2016).

1 Now the 9th Circuit has its own case that adopts completely the analysis we have
2 previously supplied to the Court.

3 2. On April 17, 2024 a bipartisan panel of the US Sentencing Commission voted
4 unanimously to prevent judges from considering a defendant's acquitted conduct
5 when determining the sentence. Although the change will not go into effect until
6 November 1, 2024, we had long and lud protested this Court's use of acquitted
7 conduct and, if, as is clearly expected, the 9th Circuit returns this case for, at a
8 minimum, resentencing, both the PAIF and Carol Hill counts, which were
9 acquitted will disappear from the sentencing calculus, which will affecting the
10 Guidelines.

11 *Milheiser* and the Sentencing Commission changes may be significant to the bail
12 and restitution considerations and, thus, are provided to the Court as they will be argued
13 on May 2nd.

14 17 RESPECTFULLY SUBMITTED this 29th day of April 2024.
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16 18 CHRISTIAN DICHTER & SLUGA, P.C.
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18 20 By: /s/ Stephen M. Dichter
19 21 Stephen M. Dichter
22 Justin R. Vanderveer
23 2800 North Central Avenue, Suite 860
24 Phoenix, Arizona 85004
25 Attorneys for Defendant David A. Harbour

26 25 **CERTIFICATE OF SERVICE**
27

28 26 I hereby certify that on April 29, 2024 I electronically transmitted the attached
27 document to the Clerk's Office using the CM/ECF system for filing and for transmittal
28 of Notice of Electronic Filing to the following CM/ECF registrants:

1 Kevin M. Rapp
2 Kevin.rapp@usdoj.gov
3 Joseph F. Bozdech
4 Joseph.bozdech@usdoj.gov
5 U.S. Attorney's Office
6 40 N. Central Avenue, Suite 1800
7 Phoenix, AZ 85004
8 Attorney for Plaintiff

9
10 /s/ Yvonne Canez
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